PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

#2

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: FEB 06 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a naturalized citizen of the United States and has two U.S. citizen daughters. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States with his spouse and children.

The district director concluded that the applicant failed to establish extreme hardship would be imposed upon his U.S. citizen parent if his waiver were denied. The application was denied accordingly. *See* Decision of District Director, dated October 1, 2001.

On appeal, counsel stated that the applicant is seeking a waiver as both the spouse and parent of United States citizens and that denial of the waiver request would result in extreme hardship to his qualifying family members. Counsel submitted documentation including an addendum to the applicant's original waiver submission, dated October 2, 2001.

On motion to reopen, counsel requests reconsideration based on psychological treatment undertaken by the applicant's spouse. Counsel submits a letter from William D. Allen, MS, dated October 9, 2002. The entire record was considered in rendering a decision on this application.

The record reflects that:

In 1991, the applicant pled guilty to Driving Under the Influence, a misdemeanor.

On December 21, 1992, the applicant was convicted of Resisting, Delaying or Obstructing Officer or Emergency Medical Technician, a misdemeanor.

On April 5, 1994, the applicant was convicted of Annoying/Molesting a Child Under 18, a misdemeanor. The applicant received a sentence of 15 days incarceration and 36 months probation for the offense.

On June 9, 2000, the applicant was convicted of Sexual Battery, a misdemeanor, and Sexual Battery, a felony. The applicant received a sentence of 120 days weekend incarceration and five years probation for this offense.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

On motion to reopen, counsel submits a brief letter from a psychologist listing the symptoms of which the applicant's wife complains including vertigo, gastrointestinal distress, headaches and back pain. The psychologist indicates that these symptoms are consistent with an anxiety disorder and are related to the applicant's immigration issues. *See* Letter from William D. Allen, MS, dated October 9, 2002. The record does not establish ongoing treatment for the applicant's wife related to her symptoms and the record does not establish a relationship between the applicant's wife and the psychologist authoring the letter beyond the described meeting. Furthermore, the record does not establish an evaluation of the psychological condition of the applicant's spouse

beyond stating a relationship between her symptoms and an anxiety disorder. Counsel fails to provide evidence that was not available previously and could not have been discovered during the prior proceedings under this application. Further, counsel fails to establish that the prior decision was based on an incorrect application of law or CIS policy.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The record does not demonstrate hardship amounting to extreme hardship in this application. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship, as stated in the prior opinion of the AAO.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of June 13, 2002 dismissing the appeal is affirmed.